



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0221; FRL-9598-02-R9]

Approval and Promulgation of Implementation Plans; California; Correcting Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On August 28, 2009, the Environmental Protection Agency (EPA) issued a final rule titled “Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District.” That publication inadvertently omitted regulatory text rescinding four previously approved rules for the Antelope Valley Air Quality Management District portion of the California State Implementation Plan (SIP). On September 20, 2016, the EPA issued a final rule titled “Approval of California Air Plan Revisions, Department of Pesticide Regulations.” That publication listed the wrong EPA approval dates and *Federal Register* citations for certain rules. The EPA is taking direct final action to correct these errors.

DATES: This rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] without further notice unless the EPA receives adverse comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. If we receive such comments, we will publish a timely withdrawal in the *Federal Register* to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0221 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information

(CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3073 or by email at gong.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever “we”, “us” or “our” are used, we mean the EPA. Information is organized as follows:

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I. Background

Each State has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

Under the Clean Air Act (CAA or “Act”), the states are responsible for adopting and submitted SIPs and SIP revisions to implement, maintain and enforce the NAAQS and to meet

other related requirements under the CAA and the EPA's implementing regulations. The EPA is responsible for taking action to approve, disapprove or conditionally approve, in whole or in part, SIPs and SIP revisions that have been adopted by the states and submitted to the EPA. The EPA reviews such SIPs and SIP revisions for compliance with all applicable requirements of the CAA and the EPA's implementing regulations.

A. Addition of Regulatory Text Rescinding Certain Rules Applicable Within the Antelope Valley Portion of California SIP

Formed in 1997, the Antelope Valley Air Quality Management District (AQMD) administers air quality management programs in the Mojave Desert portion of Los Angeles County that is referred to as "Antelope Valley." The Antelope Valley AQMD portion of the California SIP includes rules adopted by various air pollution control agencies that had jurisdiction over stationary sources in Antelope Valley since 1972, including the Los Angeles County Air Pollution Control District (APCD), the Southern California APCD, the South Coast Air Quality Management District (AQMD), and the Antelope Valley AQMD.

On August 28, 2009 (74 FR 44294), the EPA took direct final action to approve Antelope Valley AQMD Rule 1173 ("Fugitive Emissions of Volatile Organic Compounds") and to approve the rescission of four rules originally adopted by the South Coast AQMD and carried forward as part of the SIP for Antelope Valley when the Antelope Valley AQMD was established: Rule 465 ("Vacuum Producing Devices or Systems"), Rule 466 ("Pumps and Compressors"), Rule 466.1 ("Valves and Flanges") and Rule 467 ("Pressure Relief Devices").¹

In our 2009 direct final rule, we added regulatory text for the approval of Antelope Valley AQMD Rule 1173 but inadvertently failed to include regulatory text to remove South Coast AQMD Rules 465, 466, 466.1 and 467 from the applicable SIP for Antelope Valley.

¹ The EPA approved South Coast AQMD Rule 465, adopted on December 7, 1990, at 57 FR 35758 (August 11, 1992). The EPA approved South Coast AQMD Rule 466, adopted on October 7, 1983, at 52 FR 1627 (January 15, 1987). The EPA approved South Coast AQMD Rule 466.1, adopted on May 2, 1980, at 47 FR 29668 (July 8, 1982). The EPA approved South Coast AQMD Rule 467, adopted on March 5, 1982, at 48 FR 52054 (November 16, 1983).

Through this direct final rule, we are correcting the error by adding regulatory text to codify the rescission of South Coast AQMD Rules 465, 466, 466.1 and 467 as applicable to the Antelope Valley AQMD.

B. Correction of EPA Approval Dates and Federal Register citations for Certain Rules

Adopted by the California Department of Pesticide Regulation

On September 20, 2016 (81 FR 64350), the EPA took final action to approve certain rules adopted by the California Department of Pesticide Regulation (DPR) for the California SIP. In our final rule, we inadvertently cited the corresponding proposed rule (81 FR 6481, February 8, 2016) as the citation and date for approval for some of the rules, namely, California Code of Regulations (CCR), title 3, sections 6452, 6452.2, 6558, 6577 and 6864. Through this direct final rule, we are correcting the EPA approval dates and *Federal Register* citations for these DPR rules in the table of 40 CFR 52.220a(c) that lists EPA-approved state statutes and regulations.

II. What the EPA Is Doing in This Action

Section 110(k)(6) of the Clean Air Act (CAA or “Act”), as amended in 1990, provides that, whenever the EPA determines that the EPA’s action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the EPA may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the state. Such determination and the basis thereof must be provided to the state and the public. We interpret this provision to authorize the EPA to make corrections to a promulgated regulation when it is shown to our satisfaction (or we discover) that (1) we clearly erred by failing to consider or by inappropriately considering information made available to the EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. See 57 FR 56762, at 56763

(November 30, 1992) (correcting designations, boundaries, and classifications of ozone, carbon monoxide, particulate matter and lead areas).

In this action, pursuant to CAA section 110(k)(6), we are correcting the August 28, 2009 direct final rule by adding regulatory text that was inadvertently omitted and that removes rules for which we approved rescissions from the Antelope Valley AQMD portion of the California SIP. We are also correcting incorrect EPA approval dates and *Federal Register* citations for certain DPR rules that we approved in a September 20, 2016 final rule.

We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this *Federal Register*, we are simultaneously proposing the same error corrections. If we receive adverse comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, we will publish a timely withdrawal in the *Federal Register* to notify the public that the direct final error correction will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final error correction will be effective without further notice on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. This will incorporate these rules into the federally enforceable SIP.

Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Incorporation by Reference

In this action, the EPA is finalizing the deletion of certain rules that were previously incorporated by reference in the applicable California SIP. In accordance with requirements of 1 CFR 51.5, the EPA is deleting certain South Coast AQMD rules that were applicable in the Antelope Valley AQMD, as described in the amendments to 40 CFR 52.220 as set out below. The EPA has made, and will continue to make, incorporation by reference documents generally

available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely corrects errors in previous rulemakings and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within

which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of this *Federal Register*, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: **March 20, 2022.**

Martha Guzman Aceves
Regional Administrator,
Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart F - California

2. Section 52.220 is amended by adding paragraphs (c)(79)(iv)(C), (c)(125)(ii)(E), (c)(166)(i)(A)(2), (c)(166)(i)(B), (c)(166)(ii), (c)(184)(i)(B)(13), and (c)(184)(ii) to read as follows:

§ 52.220 Identification of plan - in part.

* * * * *

(c)***

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(79) * **

(iv) * **

(C) Previously approved on July 8, 1982 in paragraph (c)(79)(iv)(B) and now deleted without replacement for implementation in the Antelope Valley Air Quality Management District, Rule 466.1.

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(125) ***

(ii) ***

(E) Previously approved on November 16, 1983 in paragraph (c)(125)(ii)(D) and now deleted without replacement for implementation in the Antelope Valley Air Quality Management District, Rule 467.

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(166) ** *

(i) * * *

(A) * * *

(2) Previously approved on January 15, 1987 in paragraph (c)(166)(i)(A)(1) and now deleted without replacement for implementation in the Antelope Valley Air Quality Management District, Rule 466.

(B) [Reserved]

(ii) [Reserved]

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(184) * * *

(i) * * *

(B) * * *

(13) Previously approved on August 11, 1992 in paragraph (c)(184)(i)(B)(2) and now deleted without replacement for implementation in the Antelope Valley Air Quality Management District, Rule 465.

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(ii) [Reserved]

3. Section 52.220a in paragraph (c), table 1 is amended by revising the entries for “6452”, “6452.2”, “6558”, “6577” and “6864” to read as follows:

§ 52.220a Identification of plan – in part.

* * * * *

(c) * * *

TABLE 1--EPA-APPROVED STATUTES AND STATE REGULATIONS¹

State Citation	Title/Subject	State effective date	EPA approval date	Additional explanation
* * * * *				
6452	Reduced Volatile Organic Compound Emissions Field Fumigation	11/1/2013	81 FR 64350, 9/20/2016	Amends previous version of rule approved at 77 FR

	Methods			65294 (October 26, 2012). Amended rule adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
* * * * *				
6452.2	Volatile Organic Compound Emission Limits	11/1/2013	81 FR 64350, 9/20/2016	Amends previous version of rule approved at 77 FR 65294 (October 26, 2012). Amended rule adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
* * * * *				
6558	Recommendations for Use of Nonfumigants in the San Joaquin Valley Ozone Nonattainment Area	11/1/2013	81 FR 64350, 9/20/2016	Adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
* * * * *				
6577	Sales of Nonfumigants for Use in the San Joaquin Valley Ozone Nonattainment Area	11/1/2013	81 FR 64350, 9/20/2016	Adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
* * * * *				
6864	Criteria for Identifying	11/1/2013	81 FR	Adopted by the

	Pesticides as Toxic Air Contaminants		64350, 9/20/2016	California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.	
*	*	*	*	*	*

¹ Table 1 lists EPA-approved California statutes and regulations incorporated by reference in the applicable SIP. Table 2 of paragraph (c) lists approved California test procedures, test methods and specifications that are cited in certain regulations listed in table 1. Approved California statutes that are nonregulatory or quasi-regulatory are listed in paragraph (e).

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[FR Doc. 2022-06292 Filed: 3/24/2022 8:45 am; Publication Date: 3/25/2022]